

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
J.F. SCOTT,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHE No. 85-100

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a formal Notice of Violation for unlawful outdoor burning and an associated \$250 penalty and activation of a \$100 suspended penalty, came on for hearing before the Board on September 6, 1985. Seated for and as the Board were Lawrence J. Faulk and Gayle Rothrock (presiding). The hearing commenced shortly after 2:00 p.m. in the City Hall at Vancouver. The proceedings were tape recorded.

Appellant J.F. Scott appeared and represented himself. Respondent agency appeared and was represented by David Jahn, attorney at law.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, evidence, and
3 contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent agency has filed with the Board a copy of its General
7 Regulations for Air Pollution Sources, of which we take judicial
8 notice.

9 II

10 Appellant Scott, associated with the firm Scotland Development
11 Company, is experienced in construction and development and has done
12 land clearing and authorized burning in the past with permission from
13 the Hazel Dell Fire Department. He has also done some unauthorized
14 open burning at the Lakeshore Drive site of some condominiums under
15 construction.

16 III

17 Respondent agency SWAPCA is the activated air pollution control
18 authority for southwest Washington duly authorized to implement the
19 Washington State Clean Air Act and regulations which are derived from
20 that statute law.

21 IV

22 On May 2, 1985, at 5:00 p.m., an inspector's attention was drawn
23 to some blue-grey smoke and the remains of an open fire fifty feet off
24 the street at 8616 N.W. Lakeshore Drive in Clark County where a few
25 condominiums were being constructed. No burn permit was posted.

26 Final Findings of Fact,
27 Conclusions of Law & Order
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1 In the fire's ash pile (six feet in diameter) was processed
2 lumber, metal products (nails, cans, and spools) and some natural
3 vegetation. The inspector apprised appellant of the unlawful nature
4 of the fire, instructed him in the SWAPCA regulations, required that
5 he extinguish the fire immediately and issued him a field notice of
6 violation. Apparently the same inspector had been on the site four
7 weeks earlier and spoken to employees of Scotland Development Company
8 about regulation of open burning.

9 V

10 On March 1, 1985, respondent SWAPCA cited and fined Joel F. Scott
11 for an open burning violation and suspended two-thirds (\$100) of the
12 penalty provided Scott not have any further violations of the SWAPCA's
13 regulations.

14 VI

15 On May 8, 1985, six days after the condominium site fire violation
16 here appealed, respondent SWAPCA issued a formal notice of violation
17 and civil penalty of \$250. Further, SWAPCA notified Mr. Scott that
18 the previously suspended \$100 penalty would now be invoked. From
19 these actions, appellant Scott appealed to the Board on June 3, 1985.

20 VII

21 Any Conclusion of Law hereinafter determined to be a Finding of
22 Fact is hereby adopted as such.

23 From these Findings the Board comes to these
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25

26 Final Findings of Fact,
27 Conclusions of Law & Order
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1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these persons and these matters.
4 Chapters 43.21B and 70.94 RCW.

5 II

6 The Legislature of the state of Washington has enacted a strict
7 policy on outdoor burning.

8 It is the policy of the state to achieve and
9 maintain high levels of air quality and to this end
10 to minimize to the greatest extent reasonably
11 possible the burning of outdoor fires. Consistent
with this policy, the legislature declares that
such fires should be allowed only on a limited
basis and under close control. (RCW 70.94.740).

12 Respondent SWAPCA has adopted its General Regulations, Section
13 400-035 which provides, in relevant part, that it shall be unlawful for
14 any person to cause or allow any outdoor fire containing garbage, dead
15 animals, asphalt, petroleum products, paints, rubber products,
16 plastics or any substance which normally emits dense smoke or
17 obnoxious odors.

18 Appellant's failure to maintain and control a natural vegetation
19 site clearing fire, instead allowing it to be fueled with prohibited
20 construction residue materials, violated Section 400-035 of
21 respondent's regulations and the Clean Air Act (RCW 70.94).

22 III

23 Section 8.03 of the same SWAPCA regulation allows exemptions for
24 certain outdoor fires in otherwise prohibited circumstances.
25 Appellant's objection that others in the area periodically maintain

26 Final Findings of Fact,
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1 open fires and that the civil penalty for his fire maintenance actions
2 is excessively high is not well placed. These fires did not meet the
3 terms of the regulations and statute law.

4 IV

5 SWAPCA correctly reactivated a suspended portion of an earlier
6 civil penalty, exactly fulfilling the conditions of its official
7 letter of March 1, 1984. The reactivation should be affirmed.

8 VI

9 Any Finding of Fact hereinafter determined to be a Conclusion of
10 Law is hereby adopted as such.

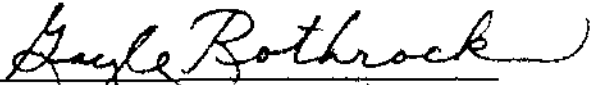
11 From these Conclusions of Law the Board enters this
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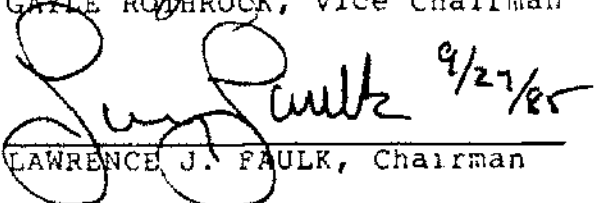
ORDER

Notice of Violation for May 2, 1985 to Joel F. Scott and Civil
penalty of \$250 is affirmed. The invocation of the suspended \$100
from the March 1, 1984 violation is also affirmed.

DONE this 27th day of September, 1985.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman

 9/27/85
LAWRENCE J. FAULK, Chairman